

**§ 385.710 Waiver of the initial decision (Rule 710).**

(a) *General rule.* Any participant may file a motion requesting the Commission to issue a final decision without any initial decision. If all participants join in the motion, the motion is granted, unless the Commission denies the motion within 10 days after the date of filing of the motion or, in the case of an oral motion under paragraph (c)(2) of this section, within 10 days after the motion is transmitted to the Commission. If all participants do not join in the motion, the motion is denied unless the Commission grants the motion within 30 days of filing of the motion or, in the case of an oral motion under paragraph (c)(2) of this section, within 30 days after the motion is transmitted to the Commission.

(b) *Content.* Any motion to waive the initial decision filed with the Commission must specify:

(1) Whether any participant waives any procedural right;

(2) Whether all participants concur in the request to waive the initial decision;

(3) The reasons that waiver of the initial decision is in the interest of parties and the public interest;

(4) Whether any participant desires an opportunity for filing briefs; and

(5) Whether any participant desires an opportunity for oral argument before the presiding officer, the Commission, or an individual Commissioner.

(c) *How and when made.* (1) Any written motion under this section may be filed at any time, but not later than the fifth day following the close of the hearing conducted under subpart E of this part.

(2) An oral motion under this section may be made during a hearing session, in which case the presiding officer will transmit to the Commission the relevant portions of the transcript of the hearing in which the motion was made.

(d) *Waiver by presiding officer.* A motion for waiver of the initial decision, requested for the purpose of certification of a contested settlement pursuant to Rule 602(h)(2)(iii)(A), may be filed with, and decided by, the presiding officer. If all parties join in the motion, the presiding officer will grant the motion. If not all parties join in

the motion, the motion is denied unless the presiding officer grants the motion within 30 days of filing the written motion or presenting an oral motion. The contents of any motion filed under paragraph (d) of this section must comply with the requirements in paragraph (b) of this section. A motion may be oral or written, and may be made whenever appropriate for the consideration of the presiding officer.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 578, 60 FR 19508, Apr. 19, 1995]

**§ 385.711 Exceptions and briefs on and opposing exceptions after initial decision (Rule 711).**

(a) *Exceptions.* (1)(i) Any participant may file with the Commission exceptions to the initial decision in a brief on exceptions not later than 30 days after service of the initial decision.

(ii) Not later than 20 days after the latest date for filing a brief on exceptions, any participant may file a brief opposing exceptions in response to a brief on exceptions.

(iii) A participant may file, within the time set for filing briefs opposing exceptions, a brief on exceptions solely for the purpose of incorporating by reference one or more numbered exceptions contained in the brief of another participant. A brief filed under this clause need not comply with the requirements set forth in paragraph (b) of this section.

(2) A brief on exceptions or a brief opposing exceptions may not exceed 100 pages, unless the Chief Administrative Law Judge, upon motion, changes the page limitation.

(3) The Secretary may extend, on motion or upon direction of the Commission, the time limits for any brief on or opposing exceptions. No additional briefs are permitted, unless specifically ordered by the Commission.

(4) A participant may not attach to, or incorporate by reference in, any brief on exceptions or brief opposing exceptions any portion of an initial or reply brief filed in the proceeding.

(b) *Nature of briefs on exceptions and of briefs opposing exceptions.* (1) Any brief on exceptions and any brief opposing exceptions must include:

(i) If the brief exceeds 10 pages in length, a separate summary of the brief not longer than five pages; and

(ii) A presentation of the participant's position and arguments in support of that position, including references to the pages of the record or exhibits containing evidence and arguments in support of that position.

(2) Any brief on exceptions must include, in addition to matters required by paragraph (b)(1) of this section:

(i) A short statement of the case;

(ii) A list of numbered exceptions, including a specification of each error of fact or law asserted; and

(iii) A concise discussion of the policy considerations that may warrant full Commission review and opinion.

(3) A brief opposing exceptions must include, in addition to matters required by paragraph (b)(1) of this section:

(i) A list of exceptions opposed, by number; and

(ii) A rebuttal of policy considerations claimed to warrant Commission review.

(c) *Oral argument.* (1) Any participant filing a brief on exceptions or brief opposing exceptions may request, by written motion, oral argument before the Commission or an individual Commissioner.

(2) A motion under paragraph (c)(1) of this section must be filed within the time limit for filing briefs opposing exceptions.

(3) No answer may be made to a motion under paragraph (c)(1) and, to that extent, Rule 213(a)(3) is inapplicable to a motion for oral argument.

(4) A motion under paragraph (c)(1) of this section may be granted at the discretion of the Commission. If the motion is granted, any oral argument will be limited, unless otherwise specified, to matters properly raised by the briefs.

(d) *Failure to take exceptions results in waiver*—(1) *Complete waiver.* If a participant does not file a brief on exceptions within the time permitted under this section, any objection to the initial decision by the participant is waived.

(2) *Partial waiver.* If a participant does not object to a part of an initial decision in a brief on exceptions, any

objections by the participant to that part of the initial decision are waived.

(3) *Effect of waiver.* Unless otherwise ordered by the Commission for good cause shown, a participant who has waived objections under paragraph (d)(1) or (d)(2) of this section to all or part of an initial decision may not raise such objections before the Commission in oral argument or on rehearing.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

**§ 385.712 Commission review of initial decisions in the absence of exceptions (Rule 712).**

(a) *General rule.* If no briefs on exceptions to an initial decision are filed within the time established by rule or order under Rule 711, the Commission may, within 10 days after the expiration of such time, issue an order staying the effectiveness of the decision pending Commission review.

(b) *Briefs and argument.* When the Commission reviews a decision under this section, the Commission may require that participants file briefs or present oral arguments on any issue.

(c) *Effect of review.* After completing review under this section, the Commission will issue a decision which is final for purposes of rehearing under Rule 713.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

**§ 385.713 Request for rehearing (Rule 713).**

(a) *Applicability.* (1) This section applies to any request for rehearing of a final Commission decision or other final order, if rehearing is provided for by statute, rule, or order.

(2) For the purposes of rehearing under this section, a final decision in any proceeding set for hearing under subpart E of this part includes any Commission decision:

(i) On exceptions taken by participants to an initial decision;

(ii) When the Commission presides at the reception of the evidence;

(iii) If the initial decision procedure has been waived by consent of the participants in accordance with Rule 710;